Before the
Federal Communications Commission
Washington, D.C.20554

In the Matter of	)	
	)	
Connect America Fund	)	**WC Docket No. 10-90**
	)	
Developing an Unified Intercarrier Compensation Regime	)	**CC Docket No. 01-92**
	)	

COMMENTS OF THE NEBRASKA RURAL INDEPENDENT COMPANIES IN RESPONSE TO SEPTEMBER 26, 2017 PUBLIC NOTICE

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SUMMARY

The Nebraska Rural Independent Companies ("NRIC") respond to the September 8, 2017 and September 26, 2017 Public Notices regarding requests by the Federal Communications Commission ("FCC") to refresh the record on the use of the concept of "network edge", tandem transport and switching in the exchange access environment and transit in the context of non-access traffic arising from the 2011 *Further Notice of Proposed Rulemaking* issued on November 18, 2011 in WC Docket No. 10-90, *et al.*, FCC 11-161.

As an initial matter, NRIC notes that it continues to believe that rational public policy supports the following intertwined principles: (1) no carrier should be able to use the network of another carrier "free of charge" regardless of the technology used; (2) proper mechanisms must be in place to provide for rational cost recovery for services being provided to carriers and to end users; and (3) there should be adherence to the "dual jurisdictional" framework established under the Communications Act of 1934, as amended, that vests in State Commissions the authority to oversee the intrastate exchange access and local traffic as discussed later in these comments. With these principles in mind, NRIC addresses the areas raised in the Public Notices regarding which the request for refreshing the record was made.

First, any further examination of the tandem switching and transport access rates must only be undertaken in the context of establishing a sufficient and predictable federal Universal Service Fund for rate of return carriers like the NRIC members, coupled with specific fact finding on whether the "predictive judgement" justifications used as basis for adopting the current access rate structures have been realized. Commissioner Michael O'Rielly has already gone on record in generally supporting this type of review. Second, the FCC need not undertake any further work on the notion of a "network edge" as the concepts of the Point of

Interconnection ("POI") for non-access traffic and of "meet point" for access traffic are concepts already known and in use by the industry. The addition of "network edge" to any form of interconnection lexicon is therefore unnecessary.

Finally, NRIC respectfully requests that the FCC confirm five non-access intercarrier compensation principles presented by NRIC which are fully supported by the law, applicable court decisions and FCC decisions with respect to the establishment and use of the concept of POI, the use of transit services and the avoidance of any forms of superior interconnection. Such confirmation, in NRIC's view, would advance the proper application of Section 251 interconnection requirements and the previously issued decisions upon which NRIC's principles are based.

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COMMENTS OF THE NEBRASKA RURAL INDEPENDENT COMPANIES IN RESPONSE TO SEPTEMBER 26, 2017 PUBLIC NOTICE

The Nebraska Rural Independent Companies ("NRIC"),[1] hereby provide these comments in response to the September 26, 2017 Public Notice (the "*September Network Routing Public Notice*") issued by the Federal Communications Commission ("the "Commission" or the "FCC").[2] In the *September Network Routing Public Notice*, the Commission requested parties to "refresh" the record on three ICC issues that impact Local Exchange Carrier ("LEC") network routing and network cost recovery responsibility: "(1) the network edge for traffic that interconnects with the Public Switched Telephone Network, (2) tandem switching and transport,

[1] The NRIC companies, each of which is an Incumbent Local Exchange Carrier ("ILEC"), submitting these Comments are: Arlington Telephone Company, Blair Telephone Company, Clarks Telecommunications Co., Consolidated Telephone Company, Consolidated Telco, Inc., Consolidated Telecom, Inc., The Curtis Telephone Company, Eastern Nebraska Telephone Company, Great Plains Communications, Inc., Hamilton Telephone Company, Hartington Telecommunications Co., Inc., Hershey Cooperative Telephone Company, Inc., K & M Telephone Company, Inc., The Nebraska Central Telephone Company, Northeast Nebraska Telephone Company, Rock County Telephone Company and Three River Telco.

[2] *See Public Notice*, WC Docket Nos. 10-90 *et. al.*, DA 17-933, released September 26, 2017 (the "*September Network Routing Public Notice*"). The *September Network Routing Public Notice* referenced the FCC's original request issued on September 8, 2017 to "refresh the record" on various intercarrier compensation ("ICC") issues. *See id.* at 1, n.1 *citing Public Notice*, DA 17-863, released September 8, 2017 (the "*September 8th Companion Public Notice*").

and (3) transit (the non-access traffic functional equivalent of tandem switching and transport)."[3] These issues were raised in the FCC's Further Notice of Proposed Rulemaking portion of the 2011 Transformation Order (the "*2011 ICC Transformation FNPRM*").[4]

I. No Need Exists to Alter the Access-Related Tandem Switching and Transport Requirements at this Time Unless and Until the FCC Establishes Sufficient and Predictable Recovery Mechanisms from the Federal Universal Service Fund

NRIC continues to believe that rational public policy supports the following intertwined principles: (1) no carrier should be able to use the network of another carrier "free of charge" regardless of the technology used;[5] (2) proper mechanisms must be in place to provide for rational cost recovery for services being provided to carriers and to end users; and (3) there should be adherence to the "dual jurisdictional" framework established under the Communications Act of 1934, as amended (the "Act") that vests in State Commissions the

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[3] *September Network Routing Public Notice* at 1 (footnote omitted). In the *September 8th Companion Public Notice*, the Commission noted that it would entertain comments addressing "any issues other than those mentioned above that were raised in the *2011 ICC Transformation FNPRM* with respect to the network edge, tandem switching and transport, and transit, or developments related to those issues, that should be considered in the context of further ICC reform." *September 8th Companion Public Notice* at 3. While NRIC reserves it right to respond in reply comments to other parties' additional ICC issues, NRIC addresses in these comments the proper structure regarding the specific ICC issues raised in the *September Network Routing Public Notice* while recognizing that the scope of the requested resolution of those issue may impact other ICC-related matters.

[4] *See September 8th Companion Public Notice* at 1, n.1 *citing In the Matter of Connect America Fund, et al., Report and Order and Further Notice of Proposed Rulemaking*, WC Docket No. 10-90 *et al.*, 26 FCC Rcd 17663 (2011), *aff'd* In Re: FCC 11-161, 753 F.3d 1015 (10th Cir. 2014), *pet. for cert. denied,* at ¶¶ 18111-13 and 18117, ¶¶ 1297, 1306-13, and 1320-21. Consistent with the *September Network Routing Public Notice,* NRIC references the further notice aspects of the Commission's 2011 action as the "*2011 2011 ICC Transformation FNPRM*" (*see September Network Routing Public Notice* at 1, n.1) and the decisional aspects of the FCC's 2011 action in FCC 11-161 as the *"2011 USF/ICC Transformation Order.*"

[5] As discussed *infra*, significant questions are raised with respect to the need to examine and test the results derived from the Commission's predictive judgement rulings that established "bill and keep" as the end game for certain ICC-related policies. *See* nn. 11-15, *infra* and accompanying text.

authority to oversee the intrastate ICC-related services (including both exchange access and local traffic as discussed later in these comments in Section III, *infra*).

With these principles in mind, NRIC fully anticipates that the Commission is well aware that rate of return ("ROR") LECs, such as the NRIC members, have significantly reduced interstate terminating end office switched access rates. The offsetting cost recovery for such reductions was and is a combination of end user charges and federal Universal Service Fund ("USF") recovery via the Connect America Fund ("CAF").[6] NRIC respectfully submits that any further reductions as could be suggested in the *2011 ICC Transformation FNPRM* discussion of tandem switching and transport[7] must provide the same opportunity for recovery by ROR LECs. But unlike the actions taken by the FCC in 2011 and the recovery framework established for end office switched access rate reductions, changed circumstances require additional actions before any further reductions in ROR LECs' interstate switched access rates may be considered.

Specifically, NRIC respectfully submits that no need exists to alter the access-related tandem switching and transport requirements at this time unless and until the FCC establishes a sufficient and predictable federal USF recovery mechanism following further fact-finding as discussed below. Based on current interstate exchange access rates and rate structures, transport accounts for a very significant amount of a typical NRIC member's interstate switched access revenues. No serious question should exist that the current ROR USF budget is insufficient, a situation that will only worsen if other revenues associated with access-related services were to

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[6] *See, e.g.,* 47 C.F.R. § 51.917. The establishment of the CAF-ICC mechanism was not made in a vacuum but rather was based on various presumptions. *See, e.g., 2011 ICC/USF Transformation Order* at ¶ 39 and Appendix I at ¶¶ 10-15; *see also* 47 C.F.R. §§ 51.917(b)(3) and (d). The CAF-ICC mechanism was previously referenced as the "Recovery Mechanism" ("RM") by the FCC. *See, e.g., 2011 USF/ICC Transformation Order* at ¶ 36.

[7] *See 2011 ICC Transformation FNPRM* at ¶¶ 1297, 1306-1310.

be recovered from the ROR USF without corresponding increases in the budget, coupled with proper on-going cost recovery.

By way of example, ROR LEC model funding is significantly below the $200 per location that was ordered by the Commission in its initial Alternative Connect America Cost Model ("A-CAM") order, and to fund eligible locations for all A-CAM recipients to the $200 per location level would require more than $100 million annually.[8] Likewise, for legacy ROR companies, the Universal Service Administrative Company estimates that the annual impact of meeting the current budget for 2017-2018 will be over $170 million.[9]

Not surprisingly, therefore, parties have properly begun to seek the necessary review of the sufficiency of the *2011 USF/ICC Transformation Order*'s ROR LEC USF legacy budget.[10] NRIC is therefore encouraged by at least one Commissioner publicly stating his support for considering increases in the model and legacy ROR USF budget.

> *I am generally favorable to adding some additional funding to the rate-of-return portion of the high-cost budget for both legacy and model support carriers.* Indeed, I have stated publicly that the Commission should closely examine our

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[8] When the Commission initially adopted the A-CAM, it made clear a preference for the use of a $200 per location funding threshold. *See, e.g., In the Matter of Connect America Fund, et al., Report and Order, Order and Order on Reconsideration, and Further Notice of Proposed* Rulemaking, WC Docket No. 10-90, *et al.*, 31 FCC Rcd 3087 (2016) at ¶ 37 ("We also make all necessary decisions to calculate support amounts for rate-of-return carriers electing to receive model-based support. The model will utilize a $200 per-location funding cap to provide support for all locations above a funding benchmark of $52.50, which is subject to reduction if necessary to meet demand for model-based support.") This threshold was effectively reduced, with the ITTA indicating that that it "estimated that funding the A-CAM Plan at $200 per location would require approximately an additional $100 million/year." *See* Notice of Ex Parte, WC Docket No. 10-90, ITTA-The Voice of America's Broadband Providers, submitted September 21, 2017 at 1.

[9] *See* http://www.usac.org/hc/program-requirements/budget-control-rate-of-return.aspx

[10] *See, e.g.,* Notice of Ex Parte, WC Docket No. 10-90, NTCA—The Rural Broadband Association, submitted October 4, 2017 at 1; Notice of Ex Parte, WC Docket No. 10-90, TCA, Inc., submitted October 2, 2017 at 1; Notice of Ex Parte, WC Docket No. 10-90, WTA—Advocates for Rural Broadband, submitted October 2, 2017 at 2.

> high-cost reserves, and review any assumptions, policies or directions regarding those reserves, to determine whether additional funding could come from those reserves without having a significant impact on our other obligations, such as the Remote Areas Fund.
>
> Based on information provided in ex partes and, separately, by an outside expert who provides quarterly reports on universal service demand and revenue projections to a broad audience, it does appear that some amount of reserve funding could be available, particularly in the short-term. While it may not provide all the relief sought by affected carriers, it could benefit consumers and carriers in areas more difficult to serve, including those areas that tend to be in rural America.[11]

Moreover, Commissioner O'Rielly has properly noted the need for a review of the predictive judgments upon which the ROR LEC USF budget was established.[12]

Both the review of the ROR LEC USF budget and the predictive judgement-based factual findings associated with the current switched access end office rate structure must be examined and decided upon before any action on further interstate switched access rate reductions can be considered. By way of example, any such review must, among other matters, address the cost recovery realities of providing interstate exchange access and broadband in order to ensure that the USF mechanism meets the Congressionally-mandated "sufficiency" requirement.[13] In the absence of such an approach, and, for that matter, establishing increases in the ROR LEC USF budget, the Commission will be confronted with a stark choice: change course regarding broadband deployment or leave exchange access rates at least at current levels because of insufficient ROR LEC USF funding levels.

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[11] *FCC Commissioner Michael O'Rielly Remarks Before WTA's Fall Conference3 in Coeur d'Alene, Idaho*, September 19, 2017 at 2-3 (emphasis added).

[12] *See id.* at 3.

[13] *See* 47 U.S.C. § 254(b)(5) ("There should be specific, predictable and sufficient Federal and State mechanisms to preserve and advance universal service.") and § 254(d)(Contributions are to be made "to the specific, predictable, and sufficient mechanisms established by the Commission to preserve and advance universal service.")

Likewise, any such change must rest upon a firm factual basis reflecting current and anticipated future end user benefits arising from the current interstate ROR LEC switched access rate structures and possible future reductions coupled with a factually-based "sufficient" ROR LEC USF budget required for predictable ROR LEC recovery of costs associated with the operation, maintenance and deployment of the networks required to provide the services subject to any such USF recovery. Only with these prerequisites met would further reductions in switched access charges be appropriate.[14]

In this regard, limiting the recovery of any further reduction in ROR LEC interstate switched access rates to the federal USF is entirely appropriate. NRIC respectfully submits that it would be fundamentally unfair for the Commission to suggest increases in end user rate surcharges. Rural end users should not be subject to increased rates simply to allow cost reductions for the purchasers of interstate switched access tandem and transport services, namely the interexchange carriers and other such customers (collectively referred to as the "IXCs"). Such a shift of recovery from end users to large corporate IXCs is particularly problematic where the predictive judgment factual assertions associated with future-oriented end user benefits arising from current exchange access reductions have not, to NRIC's knowledge, been tested against actual experience.[15]

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[14] In the absence of these predicate facts and mechanism, NRIC respectfully submits that it is premature to opine how long any transition would need to be. *See, e.g., 2011 ICC Transformation FNPRM* at ¶ 1308.

[15] *See, e.g., 2011 Transformation Order* at ¶¶ 654; *see also id.*, Appendix I. NRIC notes that the Commission has established that its Staff must engage in "timely review of the reasonableness" of "future-oriented" predictive judgements at the heart of certain findings that such Staff has made. *In the Matter of AT&T Application for Review; Sandwich Isles Communications, Inc. Petition for Declaratory Ruling, Memorandum, Opinion and Order*, WC Docket No. 09-133, FCC 16-166, released December 5, 2016 at ¶1 and ¶17.

II. The Need to Define the "Network Edge" for Access and Non-Access Traffic Types is Questionable.

In the *September 8th Companion Public Notice* to the *September Network Routing Public Notice*, the Commission stated, in part, as follows:

> We seek to refresh the record on this issue in light of regulatory and market developments since comments were received. We are particularly interested in the experiences of states that have addressed network edge issues. Moreover, in those states, how would action by the Commission affect such decisions or proceedings? What other developments in the marketplace should guide the Commission's analysis of where the network edge lies (and thus the extent of bill-and-keep reforms)?[16]

NRIC is not aware of the Nebraska Public Service Commission ("NE PSC") specifically addressing the "network edge" issue for the NRIC members since the issuance of the *2011 USF/ICC Transformation Order*. However, because NRIC is generally aware of increased activities associated with interconnection requests under Section 251 of the Act, NRIC respectfully submits that FCC guidance on "network edge" issues would be useful, and FCC guidance can and should be accomplished directly and simply on the basis of the following principles:[17]

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[16] *September 8th Companion Public Notice* at 2.

[17] NRIC notes that the *September Network Routing Public Notice* specifically referenced ICC issues related to the exchange of traffic over the Public Switched Telephone Network ("PSTN"). While NRIC is unaware of any sustainable basis to suggest that the migration from Time Division Multiplex ("TDM") protocol to Internet Protocol ("IP") changes the overall vitality and reliance on the concept regarding the continued the use of the PSTN, NRIC is generally aware of contentions that the use of IP may improperly expand the existing network transport obligations of Rural Local Exchange Carriers ("RLECs"), a class of LECs that includes each NRIC member. Such contentions can, however, be quickly rejected by the FCC simply confirming that which it has already stated: "[W]e observe that section 251 of the Act is one of the key provisions specifying interconnection requirements, and that its interconnection requirements are technology neutral—they do not vary based on whether one or both of the interconnecting providers is using TDM, IP, or another technology in their underlying networks." *2011 ICC Transformation FNPRM* at ¶ 1342. Thus, for example, the term "telecommunications service" means the offering of telecommunications for a fee directly to the public, or to such classes of

(1) As established under the 1996 revisions to the Act and applicable Commission decisions, the concepts of a Point of Interconnection ("POI") (in the context of non-access traffic), "meet point" (in the context of access traffic), and "network edge" define the physical point of connection for distinct types of traffic; and

(2) In an effort to avoid adding an unnecessary term – "network edge" -- to the interconnection lexicon[18] the Commission should make clear that:

(a) In the context of "access traffic" the concept of a "network edge" is akin to the "meet point" typically used by an RLEC in the switched access environment to connect to another carrier's tandem switch; and

(b) In the context of "non-access" traffic typically addressed in Section 251 interconnection agreements ("ICAs") – whether entered into by negotiation or arising from state commission arbitration – the concept of a "network edge" is the POI as the POI defines the physical location of interconnection through which non-access traffic is exchanged by the parties to the ICA.

III. FCC Confirmation of NRIC's Five Non-Access ICC Principles will Advance the Proper Application of Section 251 Interconnection Requirements and Further those Requirements and the Commission's Decisions Related to those Requirements.

With respect to transit services, the *September 28th Companion Public Notice* noted the following.

> Some state commissions have addressed the regulatory treatment of transit services. In light of state action, as well as other developments that have occurred since comments were filed in 2012, including the impact of the ICC transition, we seek to refresh the record regarding the need to address ICC for transit services. Specifically, we seek comment on whether the Commission should adopt regulations governing the rates for transit services. If so, what compensation

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users as to be effectively available directly to the public, *regardless of the facilities used.*" 47 U.S.C. § 151(53) (emphasis added). The operative language that is noted – "regardless of the facilities used" – envisions both TDM protocol-based facilities as well as IP-based protocol facilities. Likewise, "telephone exchange service" is also defined with technology neutrality in mind, specifically envisioning that such service includes "comparable service provided through a system of switches, transmission equipment, or other facilities (or combination thereof) by which a subscriber can originate and terminate a telecommunications service," 47 U.S.C. § 153(54). *Accord* Comments of [NRIC], WC Docket No. 10-90, *et al.*, filed February 24, 2012 at 27.

[18] In this regard, NRIC notes that the FCC has also acknowledged that concept of "network edge" relates to the "delivering of traffic" in both the access and non-access contexts. *See 2011 ICC Transformation FNPRM* at ¶1310.

> regime should apply and why? Parties should also comment on the current market for transit services and the effects of competition among transit service providers.[19]

As with the network edge issue, NRIC is not aware that the NE PSC has, to date, needed to specifically address the issue of transit service structures for the NRIC members since the issuance of the *2011 USF/ICC Transformation Order*.[20]

Yet, as indicated in the context of the network edge issue, NRIC is aware of a recent up-tick in interconnection requests, with the inevitable possibility of attempts by carriers requesting interconnection to shift transit obligations to RLECs that run afoul of the language in §251 and Commission rulings. Consequently, it is now time for the Commission once and for all to confirm the appropriate ICC treatment of transit – *i.e.*, the carrier that needs a transit arrangement to reach the properly defined POI has the responsibility to pay for all transit-related charges – and to provide such confirmation in the context of all providers, not simply wireless carriers,[21] and to do so on a permanent basis.[22] NRIC respectfully submits that such action will likely avoid

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[19] *September 8th Companion Public Notice* at 3 (footnote omitted).

[20] NRIC notes that the NE PSC properly addressed the obligations of the NRIC members regarding transit charges in a decision issued in the context of extended area service. The NE PSC ruling properly found that no obligation exists for an RLEC to pay transit charges to the existing interconnection point with the tandem operator, an interconnection point that was at the boundary of the RLEC's exchange. *See Order*, Application No. C-4165/PI-150, entered August 3, 2010 at 21 (¶ 66), 22-23 (¶ 70). As a result, this NE PSC Order complements the requirements established by the Commission in the *2011 USF/ICC Transformation Order codified* as 47 C.F.R. § 54.709(c).

[21] *See* 47 C.F.R. § 51.709(c); *see also 2011 USF/ICC Transformation Order* at ¶ 999, n.2112 (rule limited to wireless providers because of the "immediate adoption" of bill and keep for such providers.).

[22] Unfortunately, the Commission established Section 51.709(c) as an "interim" measure. *See 2011 USF/ICC Transformation Order* at ¶ 999. For the reasons stated herein, in the Act, in applicable court decisions and in FCC decisions, this rule should be made permanent as it reflects the law that the POI shall be within the RLEC's network.

any unnecessary confusion or mismatch of proper interconnection requirements based on existing FCC and court decisions and/or technology used for the exchange of local traffic.

Accordingly, for the reasons stated herein and in prior comments of NRIC,[23] the Commission should confirm the nature of "transit" services vis-à-vis the intercarrier transport and network responsibility framework established under Section 251 of the Act. NRIC respectfully submits that this can be accomplished by Commission confirmation of the following five (5) non-access ICC principles:

(1) Since the Section 251 interconnection obligations found in Sections 251(a), (b) and (c) of the Act reflect an escalating set of interconnection obligations, there can be no more onerous requirements imposed upon an ILEC under a Section 251(a) or a Section 251(b) obligation or a combination of both than that required of the ILEC under Section 251(c) of the Act;

(2) A point of interconnection or "POI" must be at a technically feasible point *within the ILEC's network*;

(3) It is unlawful to impose a transport requirement upon the ILEC that is superior to that which the ILEC provides to its own end users and/or affiliates and thus violates the "equal in quality" requirement found in Section 251(c)(2)(C) of the Act and to otherwise do so in the context of a Section 251(b) request would impose a greater burden under Section 251(b) than under Section 251(c) which the Commission has effectively deemed unlawful;

(4) In order to avoid confusion and misuse as well as abuse by parties, the concept of a "single POI per LATA" under Section 251 of the Act is unlawful where it would require an RLEC to assume operational and financial responsibility for the provision and use of transport facilities beyond its established network facilities; and

(5) The payment of any related transit charges is the responsibility of the interconnecting carrier that requires transit to reach the POI on an RLEC's

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[23] NRIC has filed various comments and reply comments addressing portions of the following five non-access ICC principles. *See* Reply Comments of [NRIC], WC Docket No. 10-90, *et al.*, filed May 23, 2011 at 39-45; Comments of [NRIC], WC Docket No. 10-90, *et al.*, filed February 24, 2012 at 21-24; Reply Comments of [NRIC], WC Docket No. 10-90, *et al.*, filed March 30, 2012 at 8-13. Rather than repeat those comments here, they are incorporated herein as part of NRIC's efforts to refresh the record outlined in the *September Network Routing Public Notice.*

network, with the cost of such transit being recovered by the interconnecting carrier through the reciprocal compensation rate that it has in place with the RLEC.

FCC confirmation of these principles will advance the proper application of the non-access interconnection requirements under Section 251 of the Act, regardless of whether the compensation regime is bill-and-keep or some other form of intercarrier compensation associated with non-access traffic. Moreover, NRIC respectfully submits that adoption of the five Non-Access ICC Principles will further the Act's requirements and the Commission's decisions related to those requirements.

A. Principle 1: Since the Section 251 interconnection obligations found in Sections 251(a), (b) and (c) of the Act reflect an escalating set of interconnection obligations, there can be no more onerous requirements imposed upon an ILEC under a Section 251(a) or a Section 251(b) obligation or a combination of both than that required of the ILEC under Section 251(c) of the Act.

As the Commission has already found and properly stated:

> Section 251(a) imposes relatively limited obligations on all telecommunications carriers; section 251(b) imposes moderate duties on local exchange carriers; and section 251(c) imposes more stringent obligations on incumbent LECs. Thus, section 251 of the Act "create[s] a three-tiered hierarchy of escalating obligations based on the type of carrier involved." [24]

Thus, under *Total Communications*, Section 251(b) interconnection arrangements cannot be more onerous than Section 251(c) interconnection arrangements without violating the "escalating obligations" directive that the Commission has established. Relatedly, NRIC also notes that, by applying the proper Section 251 legal analysis as reflected herein, requiring the network

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[24] *See, In the Matter of Total Telecommunications Services, Inc. and Atlas Telephone Company, Inc. v. AT&T Corporation, Memorandum Opinion and Order*, File No. E-97-003, FCC 01-84, released March 13, 2001 ("*Total Communications*") at ¶ 25 quoting *Guam Public Utilities Commission Petition for Declaratory Ruling concerning Sections 3(37) and 251(h) of the Communications Act*, Declaratory Ruling and Notice of Proposed Rulemaking, 12 FCC Rcd 6925, 6937-38 ¶ 19 (1997).

obligations of the RLEC to end at the POI regardless of the election of the connecting carrier to use a transit carrier to get to the POI, the "Rural Transport Rule," 47 C.F.R. §51.709(c), effectively reaffirms the law and should not be altered.

B. Principle 2: A point of interconnection or "POI" must be at a technically feasible point *within the ILEC's network.*

No serious question can exist that the point of interconnection or "POI" must be within the network of the incumbent local exchange carrier. The Act specifically states this requirement:

> (2) Interconnection
>
> The duty to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network-
>
> . . .
>
> (B) at any technically feasible point within the carrier's network. . . .[25]

Bedrock statutory interpretation principles require that specific language of a statute must be followed.[26]

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[25] 47 U.S.C. § 251(c)(2)(B) (emphasis added).

[26] *United States v. Chafin*, 808 F.3d 1263, 1270 (11th Cir. 2015), *cert. denied*, 136 S. Ct. 1391, 194 L. Ed. 2d 370 (2016) quoting *United States v. Browne,* 505 F.3d 1229, 1250 (11th Cir.2007) (quoting *United States v. Steele,* 147 F.3d 1316, 1318 (11th Cir.1998) (en banc)). (To answer a statutory interpretation question, a Court begins "with the statute's text. That is because where the statutory language is clear and unambiguous, we "presume that Congress said what it meant and meant what it said."); *see also Sierra Club v. E.P.A.*, 536 F.3d 673, 678 (D.C. Cir. 2008) quoting *In re England,* 375 F.3d 1169, 1182 (D.C.Cir.2004) (Roberts, J.) (quoting Henry J. Friendly, Benchmarks 202 (1967))("Any other conclusion would run counter to Justice Frankfurter's timeless advice on statutory interpretation: " '(1) Read the statute; (2) read the statute; (3) read the statute!' "). As the court in *Inmates of Suffolk Cty. Jail v. Rouse*, 129 F.3d 649, 655 (1st Cir. 1997) noted:

> Of course, we recognize that the plain meaning rule, while a bedrock principle of statutory construction, may yield if giving effect to literal meaning would produce a bizarre result. *See Sullivan v. CIA,* 992 F.2d 1249, 1252 (1st Cir.1993); *Charles George Trucking,* 823 F.2d at 688. But this exception is sparingly employed, and the circumstances of this case give it no purchase. The result that Congress's plain

NRIC notes that each of its members is an RLEC or, as the Act defines them – "rural telephone companies"[27] -- and thus, Section 251(c) is not applicable to them in the absence of the specific State Commission findings required by the Act.[28] As such and relying on the directives of *Total Communications*, a POI established under a Section 251(b) interconnection request cannot be more onerous – *e.g.,* imposing additional transport obligations and/or use of transit arrangements that an RLEC finds unnecessary -- than the requirements of Section 251(c) regarding the establishment of a POI within an RLEC's network.

C. Principle 3: It is unlawful to impose a transport requirement upon the ILEC that is superior to that which the ILEC provides to its own end users and/or affiliates and thus violates the "equal in quality" requirement found in Section 251(c)(2)(C) of the Act and to otherwise do so in the context of a Section 251(b) request would impose a greater burden under Section 251(b) than under Section 251(c) which the Commission has effectively deemed unlawful.

As is true with respect to following the specific requirements of Section 251(c)(2)(B) (*see* Section III.B *supra*), so too the specific requirements of Section 251(c)(2)(C) must be followed. The duty to provide interconnection must also be one "that is at least equal in quality to that provided by the local exchange carrier to itself. . . ."[29] In this regard, court decisions have made

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language portends here involves a somewhat unusual use of terms, but it is not unreasonable.

No "bizarre result" exception is relevant here by adoption of the NRIC Principle 2.

[27] *See* 47 U.S.C. § 153(44) (Definition of "Rural Telephone Company").

[28] Section 251(f)(1) provides for specific State Commission actions regarding the removal of the exemption of a Rural Telephone Company from the requirements of Section 251(c), which exemption remains in place until such State Commission findings and the implementation of any such findings. *See generally* 47 U.S.C. § 251(f)(1).

[29] 47 U.S.C. § 251(c)(2)(C).

clear that the imposition of a superior form of interconnection is unlawful.[30] As a result, FCC confirmation of Principle 3 is appropriate and necessary to avoid any issue (and the time and expense of litigation) associated with additional network routing and responsibility that may be imposed upon an ILEC and thus an RLEC under the Commission's *Total Communications* directives. For as the court has directed, competitive carriers requesting interconnection should have access "only to an incumbent LEC's *existing* network – not to a yet unbuilt superior one"; the nondiscrimination aspect of the Act "merely prevents an incumbent LEC from arbitrarily treating some of its competing carriers differently than others; it does not mandate that incumbent LECs cater to every desire of every requesting carrier."[31]

D. Principle 4: In order to avoid confusion as well as misuse and abuse by parties, the concept of a "single POI per LATA" under Section 251 of the Act is unlawful where it would require an RLEC to assume operational and financial responsibility for the provision and use of transport facilities beyond its established network facilities.

In the *2011 ICC Transformation FNPRM*, the Commission references the "single POI per LATA"[32] theory that may be misused by some to suggest that such a theory is supported by the Act and/or some form of industry standard. NRIC is properly concerned that any such use of the theory be rejected by the Commission.

The concept of a "single POI per LATA" as an industry standard is a concept that was only established in the context of a specific interconnection request, as the Commission's citation

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[30] *See Iowa Utils. Bd. v. Federal Communications Commission*, 219 F.3d 744, 758 (8th Cir. 2000).

[31] *Iowa Utils. Bd. v. F.C.C.*, 120 F.3d 753, 813 (8th Cir. 1997) at 813 (emphasis in original).

[32] *See 2011 ICC Transformation FNPRM* at ¶ 1316 citing *Application of SBC Communications Inc., Southwestern Bell Tel. Co, and Southwestern Bell Communications Service, Inc., d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Texas*, CC Docket No. 00-65, Memorandum Opinion and Order, 15 FCC Rcd 18354 (2000) ("*SWBT Texas 271 Order*") at 18390, ¶ 78, n.174.

confirms.[33] The *SWBT Texas 271 Order*'s POI discussion in paragraph 78, cited by the Commission cites in Footnote 2378 of the *2011 ICC Transformation FNPRM,* was based *solely on a provision within an agreement between SWBT and MCI,* and a decision issued *in the context of a Section 271 proceeding*:

> *See*, SWBT Texas II Application, App. 5, Tab 45, MCI (WorldCom) Agreement Attach. 4, § 1.2.2. Section 1.2.2 of the WorldCom Agreement states: 'MCI(WorldCom) and SWBT agree that MCI (WorldCom) may designate, at its option, a minimum of one point of interconnection within a single SWBT exchange where SWBT facilities are available, or multiple points of interconnection within the exchange, for the exchange of all traffic within that exchange. If WorldCom desires a single point for interconnection within a LATA, SWBT agrees to provide dedicated or common transport to any other exchange within a LATA requested by WorldCom, or WorldCom may self-provision, or use a third party's facilities.' SWBT Texas II Application, App. 5, Tab 45, WorldCom Agreement Attach. 4, § 1.2.2. WorldCom Agreement Attach. 4, § 1.2.2.[34]

To be sure, no private agreement can bind entities not a party to such an agreement, let alone create a general rule or policy applicable to the entire telecommunications industry.[35]

Accordingly, the confirmation of Principle 4 should not and need not be viewed as anything other than a proper restatement of the foundations of the Commission's decision making found in the *SWBT Texas 271 Order*. In fact, confirmation of this principle will add to the integrity of Commission decision making and a party's proper reliance thereon - foundational notions that NRIC respectfully submits that the Commission can and should properly advance.

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[33] *See id.*

[34] *SWBT Texas 271 Order*, ¶ 78 and n. 174.

[35] *See e.g.* Reply Comments of [NRIC], WC Docket No. 10-90, *et al.*, filed May 23, 2011 at 39-45.

E. Principle 5: The payment of any related transit charges is the responsibility of the interconnecting carrier that requires transit service to reach the POI on an RLEC's network, with the cost of such transit being recovered by the interconnecting carrier through the reciprocal compensation rate that it has in place with the RLEC.

As with other principles identified herein, this Principle 5 confirms the Commission's holding in the *Order on Reconsideration* in *Texcom, Inc. d/b/a Answer Indiana v. Bell Atlantic Corp. d/b/a Verizon Communications*.[36] In this case, GTE North (the applicable Verizon Communications operating name in Indiana) was the transit provider to which Texcom, Inc. ("Texcom") needed to deliver traffic for termination from a third party. The facilities used by GTE North were also those used by GTE North for its delivery of originating traffic to Texcom.[37] In paragraph 4 of its Order on Reconsideration (footnote omitted), the Commission stated that "GTE North may charge Answer Indiana for the cost of the portion of these facilities used for transiting traffic, and Answer Indiana may seek reimbursement of these costs from originating carriers through reciprocal compensation." Thus, the third party that was originating calls to Texcom was not obligated to pay transit; the responsibility for any transit was solely that of Texcom.

Consequently, NRIC's Principle 5 breaks no new ground but confirms the cost responsibility for any transit traffic and thus should be explicitly adopted by the Commission.

IV. Conclusion

Accordingly, for the reasons stated herein and in prior comments and reply comments filed by NRIC, NRIC respectfully requests that the Commission take action on issues raised in

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[36] *See Texcom, Inc. d/b/a Answer Indiana v. Bell Atlantic Corp. d/b/a Verizon Communications, Order on Reconsideration*, File No. ED-00-14-MD-14; released March 27, 2002.

[37] *See id.* at ¶¶ 3-4.

the *September Network Routing Public Notice* in the manner suggested herein.

Dated: October 26, 2017

Respectfully submitted,

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